

REMARKS

Claim 35 is added and therefore claims 12 to 35 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 12 to 14 and 16 to 34 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application No. 2003/0195676 ("Kelly").

As regards the anticipation rejections of the claim, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejection, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 23 recites "a first processing unit in the vehicle, configured to perform critical driving-related functions, . . . a second processing unit in the vehicle, . . . the system configured to *distribute critical driving-related functions* to the first processing unit and the second processing unit, *based at least in part on an availability of the respective processing units and on how processing-intensive the functions are*; and the system configured to distribute the auxiliary set of functions *exclusively* to the second processing unit."

The Kelly reference generally refers to a fuel monitoring system that "records, maintains and authorizes the amounts of fuel used by a vehicle and authorizes refueling only

in the amount downloaded onto a magnetic card from the main processing unit.” (Kelly at paragraph 13). The Kelly system “obtains data from different sources on the vehicle, . . . however, only sensors pertaining to distance and fuel usage are particularly important to the invention.” (Kelly at paragraph 31). Even if Kelly did generally concern a fuel monitoring system (18) that may receive data from existing components (14-17), and even components that may have a processor (16), Kelly does not disclose “distribut[ing] critical driving-related functions to the first processing unit and the second processing unit, based at least in part on an availability of the respective processing units and on how processing-intensive the functions are.”

First, the system of Kelly does not distribute any functions, only data, in that no set of functions are sent to two different processing units. Second, it *may* be the case that GPS functions may be performed in GPS 17 while vehicle functions may be performed in Vehicle Computer 14. However, to the extent the Office is characterizing each device performing its own functions as “distributing,” a characterization Applicants disagree with, it is still clear that this alleged “distributing” is not “based at least in part on an availability of the respective processing units and on how processing-intensive the functions are.”

Claims 12, 33, and 34 recite features substantially similar to at least some of the features discussed above with respect to claim 23, and should be allowed for at least the same reasons.

Claims 13 to 22 and 24 to 32 depend from claims 12 and 23 respectively, and should be allowed for at least the same reasons.

As further regards dependent claim 21, the Kelly reference does not identically disclose (or even suggest) the feature in which “the first computer gives computing-intensive tasks to the second computer, and the first computer executes the computer-intensive tasks if the second computer is not available.” It is stated “see Fig. 2, elements 18 and 14, 16, 17, 19 and Fig. 5, element 48, wherein all the elements being considered as functional with the exclusion of element 48 which has been considered as the second computer.” First, none of the cited elements “gives computing-intensive tasks to the second computer.” Element 48 is cited as “the second computer,” but regardless, none of the elements receives *any* tasks from another computer. Second, element 48 is *outside* the vehicle, while claim 12 recites “a computer system in a vehicle,” which includes “at least two computers that perform different

tasks.” The Office cites paragraph 66, which only discusses element 18, and says “[w]hen performing a task, the operator must bring the vehicle 11 to a stop as a safety precaution.” This is wholly unrelated to “a first computer giv[ing] computing-intensive tasks to the second computer, and the first computer executes the computer-intensive tasks if the second computer is not available.” The only place element 48 is discussed is in paragraph 52, and no mention is made of any other element (e.g., 18) giving any tasks to element 48.

Claim 15 was rejected under 35 U.S.C. 103(a) as being anticipated by U.S. Patent Application No. 2003/0195676 (“Kelly”), in view of what is “well known.”

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The Office asserts that “Kelly et al. teaches system [sic] wherein the non-driving-related functions are entertainment-specific functions (see Fig. 2, elements 17 [Global Position System], has been considered [sic] having entertainment capabilities [sic] functions for vehicle applications. Also note that using GPS device for in-vehicle entertainment is a well known function, therefore such limitation does not have patentable weight).” Office Action at page 12 (emphasis in original). First, this rejection is ambiguous, as the claim with

feature “entertainment-specific function” is both held unpatentable as obvious over what is “well known” and as having no patentable weight. These positions are conflicting, as the feature either is or is not a limitation, and cannot be both a limitation met by that which is “well known” and be non-limiting. The Supreme Court has made clear that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. at 1396.

Additionally, claim 15 depends from claim 12, and even if “entertainment-specific functions” are well known, that knowledge does not cure the deficiencies of Kelly, as discussed above in the context of claim 12. Claim 15 should be allowed for at least this reason.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by that Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 12 to 34 are allowable.

*New claim 35 does not add new subject matter and is supported by the present application. Claim 35 is allowable for essentially the same reasons as the other independent claims.*

*Still further, it is allowable because the Kelly reference does not disclose or suggest a computer system in a vehicle, comprising: at least two computers that perform different tasks, a distribution of the tasks among the at least two computers being performed in accordance with a significance of functions for guidance of the vehicle; a first graphics processor; and a second graphics processor; wherein a first one of the at least two computers includes functions related to driving, wherein a second one of the at least two computers includes functions not related to driving, wherein the at least two computers communicate with each*

*other via one predefined interface, wherein the first one of the at least two computers is connected to the first graphics processor, wherein the second one of the at least two computers is connected to the second graphics processor, wherein the graphics processors communicate with each other via the one predefined interface, and wherein the first one of the at least two computers is a closed system, the second one of the at least two computers is an open system, and the open system permits a user to make changes to a software program or to a configuration.*

*In short, the Kelly reference does not disclose or suggest an interface between two computers and another interface between the two graphics processors, as provided for in the context of the presently claimed subject matter.*

Accordingly, claims 12 to 35 are allowable.

### **CONCLUSION**

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

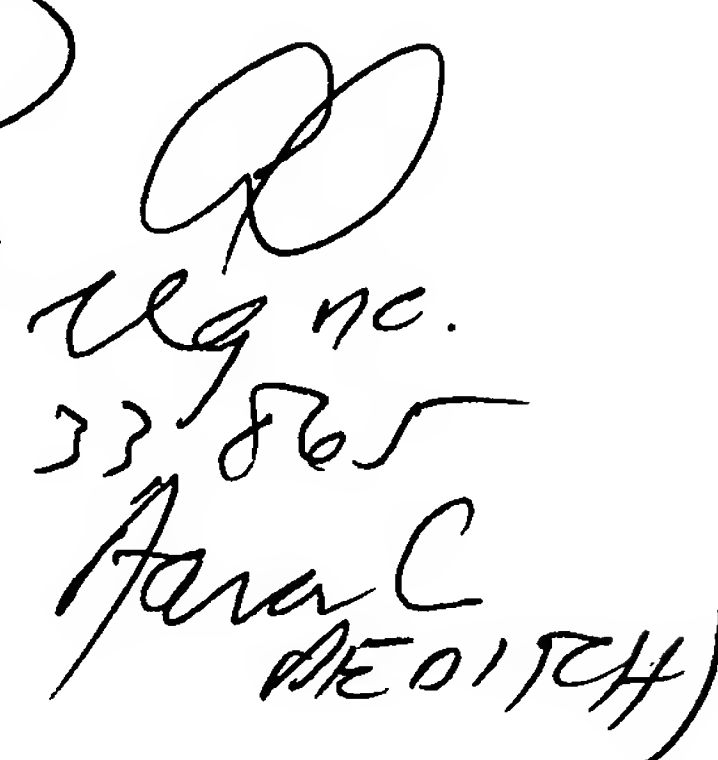
Respectfully submitted,

Dated: 4/19/2010

By: 

Gerard A. Messina  
Reg. No. 35,952

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200

  
Ug no.  
33,865  
Ara C  
DE 01/24)

**CUSTOMER NO. 26646**